

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	NO. 3:20-CR-269
v.	:	
	:	ELECTRONICALLY FILED
THOMAS HARTLEY	:	JUDGE ROBERT D. MARIANI
	:	

**DEFENDANTS' NOTICE PURSUANT TO FED. R. CRIM. P. 12.3
NOTICE OF EXERCISE OF PUBLIC AUTHORITY**

Thomas Hartley files this Notice of Exercise of Public Authority pursuant to

Criminal Rule 12.3. The rule provides:

- (1) Notice in General. If a defendant intends to assert a defense of actual or believed exercise of public authority on behalf of a law enforcement agency or federal intelligence agency at the time of the alleged offense, the defendant must so notify an attorney for the government in writing and must file a copy of the notice with the clerk within the time provided for filing a pretrial motion, or at any later time the court sets. The notice filed with the clerk must be under seal if the notice identifies a federal intelligence agency as the source of public authority.

The Rule expressly provides that notice be filed “within the time provided for filing a pretrial motion, or at any later time the court sets.”

The Notice is provided in order to meet the Rule’s notice requirement and to inform the Government that Mr. Hartley plans to seek a jury instruction on detrimental reliance, actual governmental authority, apparent governmental authority and entrapment by estoppel pursuant to *United States v. Pitt*, 193 F.3d 751, 758 n.8 (3d Cir. 1999); *United States v. Weitzenhoff*, 35 F.3d 1275 (9th Cir. 1994) and *United States v. Penn Indus. Chem. Corp.*, 411 U.S. 655 (1973).

Pursuant to Rule 12.3(a)(2)(A-C) the following is provided:

- A.) Agencies: United States Department of Defense; United States Department of the Army; Defense Finance and Account Services; National Guard Bureau; New Jersey Department of Military and Veteran Affairs; and the New Jersey National Guard.
- B.) Members: Representative individuals and agents related to the following government organizations: Office of the Under Secretary of Defense, Personnel and Readiness, Office of Military Compensation Policy, Secretary of Defense, Secretary of the Army, Defense Finance and Accounting Services Director, Chief of the National Guard Bureau, United States Property and Fiscal Officer for New Jersey, New Jersey Governor, New Jersey National Guard

Adjutant General and Commissioner of the New Jersey Department of Military and Veterans Affairs, including all subordinate commanders, staff, Officers, Soldiers, Airmen, employees, and contractors for the aforementioned Agencies' Members.

C.) Time: 1991 – 2021.

Respectfully submitted,

/s/ Patrick A. Casey
Patrick A. Casey

Attorney for Defendant,
Thomas Hartley

Myers, Brier & Kelly, LLP
425 Spruce Street, Suite 200
Scranton, PA 18503
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Date: May 28, 2021

CERTIFICATE OF SERVICE

I, Patrick A. Casey, hereby certify that a true and correct copy of the foregoing Notice Pursuant to Fed. R. Crim. P. Rule 12.3 Notice of Exercise of Public Authority was served upon the following counsel of record via the Court's ECF system on this 28th day of May 2021.

Robert J. O'Hara, Esquire
U.S. Attorney's Office
P.O. Box 309
235 North Washington Avenue
Scranton, PA 18501

/s/ Patrick A. Casey